

Appl. No. 10/814,759
Docket No. 8482D
Amdt. dated 03/22/07
Reply to Office Action mailed on 11/22/06
Customer No. 27752

REMARKS

Claim Status

Claims 1-4, 7-15 and 17 are currently pending.

Claim 1 has been amended to more clearly specify the sugar amine.

Claims 6 and 11 have been canceled without prejudice.

Rejection Under 35 USC §112, First Paragraph

The Office Action maintains the rejection of claim 17 under 35 U.S.C. 112, first paragraph, stating that the specification fails to enable "regulating the condition of skin." Applicants respectfully traverse, and reiterate the arguments presented in the Response dated October 4, 2006.

The Office Action defines "regulating the condition of skin" as "to reduce, to order, method or uniformity," citing Webster's Dictionary, Page 1913, PTO-892. The Office Action further states that the skilled artisan would view that the recitation "regulating the condition of skin" would reasonably encompass both enhancing and reducing the tactile discontinuities of skin. Applicants assert that the Office Action improperly relies on extrinsic sources to define a term which Applicants have clearly defined in the specification.

It is well-established that the patentee may act as his own lexicographer. See MPEP 2111.01 IV: Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999). Applicants further reiterate that with respect to claim interpretation, the Federal Circuit Court of Appeals recently has reiterated "we look to the specification to ascertain the meaning of a claim term as it is used by the inventor in the context of the entirety of his invention." *Phillips v. AWH Corp.*, 363 F.3d 1207, 1213 (Fed. Cir. 2005). Reliance on extrinsic sources is inappropriate when the meaning is clear from the specification: "The words of patent claims have the meaning and scope with which they are used in the specification and the prosecution history." *Multiform Desiccants, Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1478 (Fed. Cir. 1998). The specification states on page 5, line 32: "'regulating skin condition' includes prophylactically regulating and/or therapeutically regulating skin condition, and may involve one or more of the following benefits ...". Applicants further define prophylactically regulating skin condition on p. 6, lines 7-9 of the specification as "delaying, minimizing and/or preventing visible and/or tactile discontinuities in

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skin ...". "Therapeutically regulating skin condition" is defined on p. 6, lines 10-11 of the specification as including "ameliorating, e.g. diminishing, minimizing and/or effacing, discontinuities in skin." Examples of regulating keratinous tissue condition are given on page 5, line 26 through page 6, line 6 of the specification.

On the basis of these and of previously presented arguments, Applicants respectfully request that this rejection be withdrawn.

Rejection Under 35 USC §112, Second Paragraph

The Office Action maintains the rejection of claim 11 under 35 USC §112. Claim 11 has been canceled without prejudice. Applicants therefore respectfully request that this rejection be withdrawn.

Rejection Under 35 USC §102(b) Over U.S. Patent 5,804,594

The Office Action maintains the rejection of claims 1-4, 6-10, 12-15, and 17 as anticipated by Murad et al., U.S. Patent No. 5,804, 594, ("Murad"). Applicants respectfully traverse.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053. A rejection based on 35 U.S.C 102(a) or (b) may be overcome by amending the claims to patentably distinguish the present invention over the prior art. M.P.E.P. 706.02(b)-(c).

The Office Action states that Murad discloses the use of 3 to 17% glucosamine. Applicants assert, however, that this is not the glucosamine of the instantly amended claims. Murad clearly distinguishes that the composition may comprise from 5 – 50% of a primary antioxidant such as N-acetyl glucosamine, and from 3 – 17% of an additional glucosamine compound such as a sulfate or a succinate. Applicants amended claims are directed toward a lower percentage of N-acetyl compounds than is taught by Murad. Applicants therefore request that this rejection be withdrawn.

Rejection Under 35 USC §103(a) Over U.S. 5,804,594 in view of U.S. 5,935,556.

The Office Action rejects original claims 11 and 16 under 35 U.S.C. §103(a) over Murad in view of Tanner et al., U.S. Patent No. 5,935,556 ("Tanner"). Claim 11 has been canceled without prejudice. Applicants therefore respectfully request that this rejection be withdrawn.

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Conclusion

This response represents an earnest effort to place the application in condition for allowance. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-4, 7-15, and 17 is requested.

Respectfully submitted,

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By



Signature

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